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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/557,607

11/22/2005

Fumio Hashimoto

65836.00005

6196

32294

7590

04/30/2009

SQUIRE, SANDERS & DEMPSEY L.L.P.

8000 TOWERS CRESCENT DRIVE

14TH FLOOR

VIENNA, VA 22182-6212

EXAMINER

ROBINSON, KEITH O NEAL

ART UNIT

PAPER NUMBER

1638

MAIL DATE

DELIVERY MODE

04/30/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/557,607	<b>Applicant(s)</b> HASHIMOTO ET AL.	
	<b>Examiner</b> KEITH O. ROBINSON	<b>Art Unit</b> 1638	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 24 March 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 1-7, 12 and 13.  
 Claim(s) withdrawn from consideration: 8-11.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
 13. ☐ Other: \_\_\_\_\_.

Keith O. Robinson

/Medina A Ibrahim/  
 Primary Examiner, Art Unit 1638

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments, filed March 24, 2009, have not overcome the 35 USC 102 and 35 USC 103 rejections on pages 3-6 of the Office Action mailed February 4, 2009. Applicant argues that Uddin fails to disclose each and every element of claim 1 and thus cannot be used as a 102(b) reference (see page 10 of 'Remarks' filed March 24, 2009). This is not persuasive. Uddin et al disclose a method for crossing flowering plants based on their pigment genotypes comprising creating new flower color utilizing new genotype HxHx o Pg/pg o Cy/cy o Dp/dp (see, for example, page 51, last paragraph where it discloses "[r]eciprocal cross-pollination among the three major anthocyanidin predominant F1 cultivars were done and the F1 progenies were further self- and cross-pollinated to determine the segregation of anthocyanidin phenotypes; see, for example, page 53, 1st - 8th paragraph where it discloses genotypes HxHx, Pg/pg, Cy/cy, and Dp/dp produced from crossing flowering plants based on pigment genotypes and the segregation of genes to produce new genotypes).

Regarding the 35 USC 103 rejection, Applicant argues that the combination of the cited references does not teach the claimed subject matter (see page 12, 1st paragraph of 'Remarks' filed March 24, 2009). This is not persuasive. Oud et al teach a method for crossing flowering plants based on their pigment genotypes (see, for example, page 176, 2nd column, 'Materials and methods' where it teaches that breeding material that served as acceptors differed considerably in genetic backgrounds and flower color and recombinations using transgenic lines as male as well as female were made with the four selected elite lines); Oud et al also teach genotype HxHx o Pg/pg o Cy/cy o Dp/dp, which is heredity of pelargonidin, cyanidin and delphinidin (see, for example, page 176, Figure 1 where it depicts the biosynthetic pathway of anthocyanins in *Petunia hybrida* and teaches pelargonidin, cyanidin and delphinidin as well as genes Hf and Ht, which Griesbach teaches are genes associated with hydroxylation. See page 243, 1st column, 'Results'.) Oud et al teach that in *Petunia hybrida* different flower types can be distinguished based on the gene Un which determines the 'undulata' shape of the corolla (see page 175, 1st column, 'Introduction') and the specification teaches that genotypes D/d and E/e are associated with corolla characters of double flower type and marginal variegation, respectively (see, for example, page 3 of 'Claims' filed November 22, 2005). van Raamsdonk teaches the flavonoid biosynthesis route formula of claim 3 (see, for example, page 50, Figure 1 where it depicts the biosynthetic pathway of anthocyanidins). In addition, van Raamsdonk teaches that hydroxylation of the 3' and 5' locations in dihydrokaempferol results in the synthesis of other precursors and that flavonoid 3',5'-hydroxylase HF hydroxylates both locations in the B-ring as well as the three pigments pelargonidin, cyaniding and delphinidin (see page 49, 2nd column, lines 3-18). Griesbach teaches genes associated with hydroxylation and thus, it would have been obvious to one of ordinary skill in the art that the combination of the cited references would read on the claimed invention.